

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 259 of 2000

in

SPECIAL CIVIL APPLICATION No 1220 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KIRANSINGH @ KIRIYO RATANSINGHBARIA-IN BHAVNAGAR JAIL

Versus

STATE OF GUJARAT

Appearance:

MR KAMLESH B MEHTA for Appellant

MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 22/08/2000

ORAL JUDGEMENT (per M.R. Calla, J.)

This Letters Patent Appeal is directed against the judgment and order dated 24th April 2000 passed by the learned Single Judge whereby the Special Civil Application filed by the present appellant challenging the detention order dated 29th November 1999 passed by the District Magistrate, Panchmahal detaining the appellant under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') was dismissed.

2. The detention order was passed on 29th November 1999 by the District Magistrate, Panchmahal at Godhra. In the grounds of detention in support of the detention order, the detaining authority has narrated the particulars of three criminal cases registered against the appellant - Criminal Case No.128/98 dated 25th October 1998 at Jhalod under the provisions of the Bombay Prohibition Act, Criminal Case No.85/99 dated 2nd March 1999 at Godhra Taluka Police Station under Sections 427, 325, 323, and 435 of the Indian Penal Code, and Criminal Case No.245/99 dated 15th September 1999 at Godhra Taluka Police Station under the provisions of the Bombay Prohibition Act. Having given the particulars of these Criminal Cases, the detaining authority has mentioned that the appellant was a bootlegger, head strong and dangerous person and in case he is not detained, his activities are likely to effect public health and breach of public order.

3. In the body of the detention order, the reference was also made to the statements of four witnesses with regard to the unregistered offences and the privilege under Section 9(2) of the PASA Act had been invoked.

4. So far as the statements of these four witnesses are concerned, the contention which was raised before the learned Single Judge that the satisfaction in this regard cannot be said to have been arrived correctly at as it was a case of improper exercise of power under Section 9(2) because the learned Single Judge has himself concluded that it cannot be said that the powers under Section 9(2) had been properly exercised by the detaining authority and that the improper exercise of powers can be said to have been infringed the right of the detenu of making an effective representation and therefore, the

statements of the anonymous witnesses cannot form a valid ground for detaining the detenu.

5. However, the learned Single Judge has referred to Section 6 of the PASA Act and has found that each of the grounds is an independent ground for detention. Reliance has been placed on the decision in the case of Attorney General for India and ors. v. Amratlal Prajivandas and ors., reported in AIR 1994 SC 2179 which has been followed by a Full Bench of our Court in Special Civil Application No. 646/99 decided on 31st March 2000. So far as this proposition of law is concerned, it cannot be disputed, but the question which has been raised in this case is that it cannot be said that once the statements of anonymous witnesses and the satisfaction arrived at on that basis is not taken into consideration, the only material which remains is the criminal cases, the particulars of which have been given and the mere mention of allegations against the appellant in the body of the detention order and the bald mention that he had become obstacle to the public order and public health does not make it a case of breach of public order and at the most it can be said to be a case of breach of law and order. The learned AGP has placed reliance on the decision in the case of Kanuji Zala v. State of Gujarat and ors. reported in 1999(2) GLH 415. We have considered this question right today in another Letters Patent Appeal No.223/00 and have found that such bald mention in absence of any credible material does not form a material germane to the question of public order or public health and therefore, the detention order cannot be sustained. For the reasons given in the judgment and the view which we have taken today after applying the law laid down by the Supreme Court in the case of Kanuji Zala (supra), we find that in the facts of the present case, it cannot be said that it is a case of breach of public order or that the appellant had become an obstacle to the public health or public order so as to warrant the detention. Besides this fact, it has been categorically pointed out by the learned Counsel for the appellant in the present case that out of the three cases which were registered against the appellant which have been mentioned in the detention order in Criminal case registered at Jhalod Police Station, i.e. Criminal Case No. 128/98, the appellant has been acquitted on 24th May 2000 and the other case being Criminal Case No. 85/99 which was registered for the offences under the Indian Penal Code has not been taken to be a material for breach of public order or public health by the learned Single Judge himself and so far as the third case, i.e. Criminal Case No. 245/99 is concerned, the case is pending, but the muddamal has been

returned to the importer of the unauthorised liquor and the allegation against the appellant was that he was transporting the unauthorised liquor from one vehicle to another vehicle. It is, therefore, a clear case in which it can be said in no uncertain terms that there was no credible material whatsoever before the detaining authority so as to form an opinion that the appellant had become an obstacle to public order or public health. In absence of any case of threat or obstruction to the public order or public health, the detention order cannot be sustained in the eye of law. This Letters Patent Appeal, therefore, succeeds. The impugned order passed by the learned Single Judge on 24th April 2000 is hereby quashed and set aside. The detention order dated 29th November 1999 is also hereby quashed and set aside. The Letters Patent Appeal as well as the Special Civil Application are allowed.

6. Accordingly, it is directed that the appellant, namely, Kiransingh @ Kiriyo Ratansingh Baria, who is said to have been shifted to Rajkot Jail from Bhavnagar Jail shall be released forthwith, if not required in any other matter or for any other detention order.

(M.R. Calla, J.)

(R.R. Tripathi, J.)

Sreeram.